

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunications Act of 1996)	
)	
Petition of the Kentucky Public Service)	
Commission for Additional Delegated Authority to)	
Implement Number Conservation Measures)	

ORDER

Adopted: May 31, 2007

Released: May 31, 2007

By the Associate Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a petition filed by the Kentucky Public Service Commission (Kentucky Commission) for delegated authority to implement mandatory thousands-block number pooling.¹ Specifically, we conclude that the petitioner has demonstrated that it has met the criteria established by the Federal Communications Commission (Commission) for delegation of authority to implement mandatory pooling in the 270 numbering plan area (NPA). In granting this petition, we permit the state of Kentucky to optimize numbering resources and further extend the life of the 270 NPA.

II. BACKGROUND

2. *The 1996 Act and Commission Rules and Orders.* In the *NRO First Report and Order*, the Commission determined that implementation of thousands-block number pooling is essential to extending the life of the North American Numbering Plan (NANP) by making the assignment and use of NXX codes more efficient.² Therefore, the Commission adopted national thousands-block number pooling as a

¹ See Kentucky Public Service Commission Petition for Additional Delegated Authority to Implement Number Conservation Measures, CC Docket Nos. 99-200, 96-98 (filed Oct. 10, 2006) (Kentucky Petition); *see also Pleading Cycle Established for Comments on the Kentucky Public Service Commission's Petition for Additional Delegated Authority to Implement Number Conservation Measures*, CC Docket Nos. 99-200, 96-98, Public Notice, 22 FCC Rcd 957 (2007). The following parties filed comments: National Association of Regulatory Utility Commissioners (NARUC); National Telecommunications Cooperative Association (NCTA); Nebraska Public Service Commission (Nebraska Commission); and Sprint Nextel Corporation (Sprint). The Kentucky Commission and NCTA filed reply comments.

² *Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7625, para. 122 (2000) (*NRO First Report and Order*). The NANP was established over 50 years ago by AT&T to facilitate the expansion of long distance calling. The NANP, the basic numbering scheme for the United States, Canada, and most Caribbean countries, is based on a 10-digit dialing pattern, NPA-NXX-XXXX, where N represents any digit from 2 through 9 and X represents any digit from 0 through 9. Thousands-block number pooling is a numbering resource optimization measure in which 10,000 numbers in an NXX are divided into ten sequential blocks of 1,000

valuable mechanism to remedy the inefficient allocation and use of numbering resources and required thousands-block pooling in the largest 100 Metropolitan Statistical Areas (MSAs) within nine months of selection of a pooling administrator.³ The Commission also allowed state commissions previously delegated authority to implement thousands-block pooling to continue to do so.⁴ The Commission stated that it would continue to consider state petitions for delegated authority to implement pooling outside the top 100 MSAs on a case-by-case basis.⁵ The Commission delegated authority to the Common Carrier Bureau, now the Wireline Competition Bureau (Bureau), to rule on state petitions for delegated authority to implement number conservation measures, including thousands-block number pooling, where no new issues were raised.⁶

3. In implementing thousands-block number pooling, the Commission said that state petitions for delegated authority must demonstrate that: (1) an NPA in the state is in jeopardy; (2) the NPA in question has a remaining life span of at least one year; and (3) the NPA is in one of the largest 100 MSAs or, alternatively, the majority of wireline carriers in the NPA are local number portability (LNP)-capable.⁷ The Commission recognized that there may be “special circumstances” where pooling would be of benefit in NPAs that do not meet all three criteria and said that pooling may be authorized in such an NPA upon a satisfactory showing by the state commission of such special circumstances.⁸

4. National rollout of thousands-block number pooling commenced on March 15, 2002, in the 100 largest MSAs and area codes previously subject to pooling pursuant to state delegation orders.⁹ All carriers operating within the 100 largest MSAs, except those specifically exempted by the order, were

numbers and allocated to different service providers (or different switches) within a rate center. *See Numbering Resource Optimization*, CC Docket Nos. 99-200, 95-116, Fourth Report and Order, 18 FCC Rcd 12472, 12474, para. 5 (2003) (*NRO Fourth Report and Order*).

³ *See NRO First Report and Order*, 15 FCC Rcd at 7625, 7644-45, paras. 122, 157-158. MSAs, designated by the Bureau of Census, follow geographic borders and are defined using statistics that are widely recognized as indicative of metropolitan character. *See Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Memorandum Opinion and Order, 12 FCC Rcd 8115, 8122, para. 17 n.26 (1997).

⁴ Section 251(e)(1) of the Communications Act of 1934, as amended (the Act), allows the Commission to delegate to state commissions jurisdiction over numbering administration. 47 U.S.C. § 251(e)(1).

⁵ *See NRO First Report and Order*, 15 FCC Rcd at 7651, para. 169. At the time the *NRO First Report and Order* was adopted, several states already had delegated authority to implement thousands-block pooling and several more states had petitions pending with the Commission. *Id.* The Commission observed that the national pooling framework, when adopted, would supersede the interim delegations of authority to state commissions. *Id.*

⁶ *See NRO First Report and Order*, 15 FCC Rcd at 7651-52, para. 170.

⁷ *See id.* These three criteria were adopted before implementation of nationwide thousands-block number pooling and before the Commission recognized that full LNP capability is not necessary for participation in pooling. *See NRO Fourth Report and Order*, 18 FCC Rcd at 12476, para. 11 (recognizing that full LNP capability is not necessary for participation in pooling but the underlying architecture, Location Routing Number (LRN), must be deployed); *see also Numbering Resource Optimization*, CC Docket No. 99-200, Third Report and Order and Second Order on Reconsideration, 17 FCC Rcd 252, 262, para. 21 n.47 (2001) (*NRO Third Report and Order*). In the *NRO Third Report and Order*, the Commission rejected a request to delegate authority to the states to determine on a case-by-case basis whether to extend pooling requirements. *NRO Third Report and Order*, 17 FCC Rcd at 262, para. 21. The Commission explained that uniform national standards for pooling are necessary to minimize confusion and additional expense related to compliance with inconsistent regulatory requirements. *Id.*

⁸ *See NRO First Report and Order*, 15 FCC Rcd at 7651-52, para. 170.

⁹ *Numbering Resource Optimization*, Docket 99-200, Order, 17 FCC Rcd 7347, 7348, paras. 3-4 (WCB 2002) (*Pooling Rollout Order*).

required to participate in thousands-block number pooling in accordance with the national rollout schedule.¹⁰ The Commission specifically exempted from the pooling requirement rural telephone companies and Tier III Commercial Mobile Radio Service (CMRS) providers that have not received a specific request for the provision of LNP from another carrier, as well as carriers that are the only service provider receiving numbering resources in a given rate center.¹¹ In exempting certain carriers from the pooling requirement, the Commission recognized that pooling is most effective in areas where competition exists and confirmed that “it is reasonable to require LNP only in areas where competition dictates its demand.”¹² The Commission directed the North American Numbering Plan Administrator (NANPA) to cease assignment of NXX codes to carriers after they were required to participate in pooling.¹³ Instead, carriers required to participate in pooling would receive numbering resources from the national thousands-block number Pooling Administrator responsible for administering numbers in thousands-blocks.¹⁴

5. As discussed above, the Commission concluded that mandatory pooling should initially take place in the largest 100 MSAs.¹⁵ In the *Pooling Rollout Order*, the Bureau explained that it would consider extending pooling outside of the top 100 MSAs after pooling was implemented in the top 100 MSAs.¹⁶ The Bureau also encouraged voluntary pooling in areas adjoining qualifying MSAs.¹⁷ Since the completion of the national rollout of pooling in the top 100 MSAs, the Commission has extended pooling in response to petitions from state utility commissions requesting permission to expand the scope of thousands-block pooling.¹⁸

6. *The Kentucky Petition.* On October 10, 2006, the Kentucky Commission filed a petition for authority to implement mandatory thousands-block number pooling in the 270 NPA.¹⁹ In its petition, the Kentucky Commission asserts that it has met the criteria for delegation of authority to implement pooling established by the Commission, and that, in addition, special circumstances exist to justify such delegation.²⁰ According to the Kentucky Commission, the utilization rate for the 270 NPA is low and despite the availability of optional pooling, carriers are reluctant to participate and instead continue to request full NXX codes.²¹ The Kentucky Commission is particularly concerned that the 270 NPA requires relief so soon after its creation seven years ago.²²

¹⁰ See *NRO Fourth Report and Order*, 18 FCC Rcd at 12477, para. 14.

¹¹ See *id.* at 12473, para. 1. Tier III carriers are non-nationwide CMRS providers with no more than 500,000 subscribers as of the end of 2001. See *id.* at 12479 n.50.

¹² *Id.* at 12476, 12478, paras. 11, 17.

¹³ See *id.* at 12477, para. 14.

¹⁴ See *id.*

¹⁵ See *NRO First Report and Order*, 15 FCC Rcd at 7645, para. 158.

¹⁶ *Pooling Rollout Order*, 17 FCC Rcd at 7348, para. 3.

¹⁷ See *id.* at 7348, para. 4.

¹⁸ See *Numbering Resource Optimization*, Docket 99-200, Order and Fifth Further Notice of Proposed Rulemaking, 21 FCC Rcd 1833 (2006); *Numbering Resource Optimization*, CC Docket 99-200, Order, 21 FCC Rcd 13188 (2006) (*Second Pooling Order*).

¹⁹ Kentucky Petition at 1.

²⁰ *Id.* at 3.

²¹ See *id.* at 5.

²² See *id.* at 6.

III. DISCUSSION

7. Based upon the record, we delegate to the Kentucky Commission the authority to implement mandatory thousands-block number pooling in the 270 NPA. We conclude that the Kentucky Commission has demonstrated that the 270 NPA meets the criteria for delegated pooling authority established in the *NRO First Report and Order*.

8. *Pooling Authority Criteria.* First, we find that the petition before us presents a jeopardy situation as defined by industry standards.²³ As the Kentucky Commission notes in its petition, the NANPA has declared a status of jeopardy in the 270 NPA, with final jeopardy procedures taking effect on October 1, 2006.²⁴ Second, we find that the record demonstrates that the NPA in question has a remaining life span of at least a year.²⁵ Specifically, although the Kentucky Commission reported, at the time of its filing, an exhaust date for the 270 NPA in the fourth quarter of 2007,²⁶ more recent NANPA data now forecast exhaust of the 270 NPA in the fourth quarter of 2008.²⁷ Third, the Kentucky Commission asserts that to the best of its knowledge, a majority of the providers within the 270 NPA are currently LNP capable,²⁸ and data from the Local Exchange Routing Guide (LERG) confirms this assertion.²⁹ Thus, we conclude that the Kentucky Commission has satisfied the three-prong test for delegation of authority to implement mandatory pooling in the 270 NPA.

9. *LNP Exemption for Rural Carriers.* The National Telecommunications Cooperative Association (NTCA) asks that we deny the Kentucky Petition for failure to include financial impact data for rural carriers or that we impose a requirement that number pooling not jeopardize rural carriers' LNP exemption, as was done in *Second Pooling Order*.³⁰ The Commission continues to be mindful of the concerns regarding costs to rural and small carriers associated with the implementation of thousands-block number pooling and guided by the principle, expressed in our pooling precedent, that pooling has less impact on numbering resource exhaust where there is no competition.³¹ For these reasons, the Commission has exempted from pooling rural telephone companies, as defined in the Communications Act of 1934, as amended,³² and Tier III CMRS providers, as defined in the *E911 Stay Order*,³³ that have

²³ The NPA Code Relief Planning and Notification Guidelines (ATIS-0300061) define a jeopardy NPA as existing "when the forecasted and/or actual demand for CO Code resources will exceed the known supply during the planning/implementation interval for relief. Accordingly, pending exhaust of CO Code resources within an NPA does not represent a jeopardy condition if NPA relief has been or can be planned and the additional CO Codes associated with the NPA will be implemented in time to satisfy the need for new CO codes." See section 15.0 of the NPA Code Relief Planning and Notification Guidelines (ATIS 03-0061) at page 22.

²⁴ Kentucky Petition at 6; see also NANPA: Publications – Jeopardy Procedures 270 NPA (KY) Final Jeopardy Procedures (visited May 22, 2007) http://www.nanpa.com/news/jeopardy_declaration_table.html.

²⁵ Kentucky Petition at 3, 6.

²⁶ See *id.*

²⁷ See NANPA 2006 Annual Report, Attachment 6 – 2006 NRUF and NPA Exhaust Analysis (NANPA 2006 Report).

²⁸ Kentucky Petition at 3, 6.

²⁹ See Traffic Routing Administration, *Local Exchange Routing Guide* (updated April 1, 2007).

³⁰ NTCA Comments at 2; see also *Second Pooling Order*, 21 FCC Rcd at 13194, para. 14.

³¹ See *NRO Fourth Report and Order*, 18 FCC Rcd at 12476, paras. 18-19.

³² 47 U.S.C. § 153(37).

³³ *Revision of the Commission's Rules to Ensure Compatibility with the Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Order to Stay, 17 FCC Rcd 14841 (2001) (*E911 Stay Order*).

not yet received a specific request for the provision of LNP from another carrier, and carriers that are the only service provider receiving numbering resources in a given rate center.³⁴ We believe these exemptions continue to be appropriate in the expansion of pooling. We therefore mandate that the Kentucky Commission, in exercising the pooling authority delegated in this Order, implement this delegation consistent with the federal exemption for these carriers, as described above. Accordingly, we expect that rural carriers that are not LNP-capable will not be required to implement pooling solely as a result of the delegation of authority set forth in this Order.

10. In addition, we note, as explained in the *NRO First Report and Order*, that costs of numbering administration, specifically the costs of thousands-block number pooling, will be recovered through an exclusive federal recovery mechanism to enable the Commission to satisfy its mandate that costs be borne on a competitively neutral basis, and to minimize the administrative and enforcement difficulties that might arise if jurisdiction over numbering administration cost recovery were divided.³⁵ The Commission addressed the specifics of that mechanism in the *NRO Third Report and Order*, concluding, in particular, that rate-of-return carriers will recover their costs in their interstate access charges in the ordinary course.³⁶ Finally, given that we have delegated the Kentucky Commission authority to implement mandatory number pooling subject to the exemption for “rural telephone companies,” we do not anticipate that rural carriers will require a waiver of the pooling requirement. Rural carriers nonetheless retain the option of filing a petition to demonstrate that they meet the standard to have this requirement waived to the extent that pooling obligations apply. Thus, beyond the general exemption from pooling requirements for rural telephone companies, we believe that the availability of a federal cost recovery mechanism and an option to petition for waiver further allay the NCTA’s concerns regarding the asserted lack of financial impact data for rural carriers.

IV. CONCLUSION

11. The Kentucky Commission has demonstrated that it has met the Commission’s criteria for delegation of authority to implement mandatory pooling in the 270 NPA, and we expect that pooling will be beneficial in extending the life of that NPA. Given that the 270 NPA has a low utilization rate and that many carriers are not participating in optional pooling, it is most efficient and in the public interest to permit the Kentucky Commission to implement mandatory thousands-block number pooling in the NPA at this time. The petitioner observes, and we agree, that mandatory thousands-block number pooling would extend the life of the 270 NPA by putting to use resources that otherwise would be stranded.³⁷ Therefore, for the reasons stated above, we hereby grant the Kentucky Commission authority to implement mandatory thousands-block number pooling in the 270 NPA.

V. ORDERING CLAUSES

12. ACCORDINGLY, pursuant to the authority contained in sections 1, 4(i), and 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 251, and sections 0.91, 0.291 and 52.9(b) of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 52.9(b), IT IS ORDERED that the Kentucky

³⁴ See *NRO Fourth Report and Order* at 12478-79, para. 18.

³⁵ *NRO First Report and Order*, 15 FCC Rcd at 7663-64, para. 196.

³⁶ See *NRO Third Report and Order*, 17 FCC Rcd at 264, para. 25; see also *NRO Fourth Report and Order*, 18 FCC Rcd at 12479 n.47 (discussing cost recovery for rural carriers).

³⁷ Kentucky Petition at 2, 5.

Public Service Commission's Petition for Additional Delegated Authority to Implement Number Conservation Measures filed on October 10, 2006 IS GRANTED to the extent discussed herein.

FEDERAL COMMUNICATIONS COMMISSION

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